

RECORDING REQUESTED BY

Department of Water Resources
Division of Planning and Local Assistance
1416 Ninth Street, P.O. Box 942836
Sacramento, California 94236-0001
Attention: Phillip Wendt

WHEN RECORDED MAIL TO

Department of Water Resources
Division of Planning and Local Assistance
1416 Ninth Street, P.O. Box 942836
Sacramento, California 94236-0001
Attention: Phillip Wendt

Recorded in the County of Sacramento
John Dark, Clerk/Recorder



No Fee

199807301260 1:31pm 07/30/98

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2.00

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT
TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION
FORMER PG&E POWER PLANT SITE, JIBBOOM STREET
"JIBBOOM BUILDING SITE"
Sacramento, Sacramento County, California

This Covenant and Agreement ("Covenant") is made on the first day of July, 1998, by the California Department of Water Resources ("Covenantor"), concerning certain real property situated in the City of Sacramento, County of Sacramento, State of California, described in Exhibit "A" ("the Property") and depicted in the map entitled Exhibit "B", both attached hereto and incorporated herein by this reference, and by the California Department of Toxic Substances Control ("DTSC") with reference to the following facts:

A. The State of California (State) is the owner of record of the Property. Covenantor has control and possession of the Property and is authorized with the approval of the Department of General Services to enter into this Covenant, Water Code section 11595 and Government Code section 11005.2.

B. Description of Facts.

The property identified as Exhibits A/B contains hazardous substances. This Jibboom Street site was operated as a steam power plant by the Pacific Gas and Electric Company (PG&E) and a metal salvage yard by Associated Metals. Lead has been found on the site and determined to be a Resource Conservation and Recovery Act Characteristic Waste and a low level threat

waste under the National Oil and Hazardous Substances Pollution Contingency Plan. The final Remedial Action Plan ("RAP"), dated December 1996, therefore requires containment of the waste with an engineered earthen cap and grading the surrounding soils to prevent erosion of the cap. In addition, the RAP requires establishment of institutional controls through this deed restriction and an operation and maintenance agreement.

The area is zoned by the City of Sacramento for commercial use. It is bounded by a parcel owned by the City of Sacramento on the north side, another parcel owned by Covenantor on the south side, the Southern Pacific Railyards to the south and east, the Sacramento River bicycle trail to the west, and Jibboom Street and Interstate 5 to the east. North of the parcel owned by the City of Sacramento is another parcel owned by Covenantor which is bounded on the north by a motel.

C. Covenantor desires and intends that in order to protect the present or future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances which have been deposited on the Property.

D. Pursuant to Civil Code section 1471(c), DTSC has determined that this Covenant is reasonably necessary to protect present and future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260.

ARTICLE I

GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the Property shown in attached Exhibit "B" incorporated herein. Each and all

of the Restrictions are imposed pursuant to Sections 25356.1 and 25355.5 of the California Health and Safety Code and run with the land. Each and all of the Restrictions are enforceable by the DTSC and its successor agencies, if any.

1.02 Concurrence of Owners and Occupants Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein as may be modified from time to time or terminated by mutual consent of DTSC and the Covenantor. Pursuant to Civil Code section 1471(b), all successive owners of the land are expressly bound hereby for the benefit of the DTSC herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the applicable and relevant Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the specified portion of said Property.

ARTICLE II

DEFINITIONS

2.01 Department or DTSC. "Department" or "DTSC" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 Owners. "Owner" shall mean the State of California or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

2.05 Covenantor. "Covenantor" shall mean the Department of Water Resources or its successors in interest, including heirs and assigns who have control and possession over the property, and may include future owners and occupants other than the State of California.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use.

(a) Covenantor agrees ~~not~~ to use the Property for any of the following purposes without first applying for and receiving a written variance from the Department for that use pursuant to Article IV of this Covenant:

- (1) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (2) A hospital or convalescent home for humans.
- (3) A public or private school for persons under 21 years of age.
- (4) A group care facility for the physically and mentally handicapped.
- (5) A day care center for children.

(b) Covenantor shall not permit any use of or activity at the site which would disturb the integrity of any hazardous waste containment or monitoring system, including but not limited to the cap, without first applying for and receiving a written variance from the DTSC pursuant to Article IV of this Covenant and agreement.

3.02 Notice of Cap Disturbance.

The Owner(s) or Occupant(s), shall notify the Department of each of the following, upon discovery or specific knowledge of the disturbance by that Owner or Occupant: (1) the type, cause, location and date of any disturbance to the cap which could reasonably affect the ability of the cap to contain subsurface hazardous substances on the Property; and (2) the type and date of repair of such disturbance. Notification to the Department shall be made by telephone within seventy-two (72) hours of the

discovery of the cap disturbance and within five (5) working days after completion of timely repairs. This provision does not apply to disturbances of the Cap that DTSC specifically authorizes by variance or otherwise.

3.03 Access.

(a) Access for DTSC. DTSC shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with this Covenant which is necessary to assure the Remedial Action Plan remedy is maintained as required to protect the public health and safety. Except in an emergency, defined for the purposes of this section as imminent danger to public health and safety, DTSC must provide the Owner or Occupant with at least five (5) working days notice prior to entry and access.

(b) Access for Implementing Operations and Maintenance. DWR, its authorized officers, employees, agents, contractors or subcontractors required to carry out operations and maintenance activities shall have reasonable right of entry and access to the Property for the purposes of implementing the Operations and Maintenance Agreement. Except in an emergency, defined for the purposes of this section as imminent danger to public health and safety, DWR must provide the Owner or Occupant with at least five (5) working days notice prior to entry and access.

3.04 Conveyance of Property. The Covenantor or its successors or assigns shall provide notice to DTSC within fifteen (15) days after any sale, lease, or other conveyance of the Property or an interest in the Property to a third person; except, that this section shall not apply to encroachment permits, except for subsurface encroachments, leases for less than one (1) year or month-to-month tenancies, and right of entry permits. DTSC shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by specific provision.

3.05 Enforcement. Failure of the Covenantor to comply with any of the requirements, as set forth in paragraph 3.01, shall be grounds for DTSC, by

reason of the Covenant, to require that the Covenantor modify or remove any improvements constructed in violation of paragraph 3.01. Violation of the Covenant may be grounds for DTSC to file civil and criminal actions against the owner as provided by law. Except in case of emergency, DTSC must provide Covenantor with thirty (30) days advance written notice before instituting such actions.

3.06 Notice in Agreements. Any transferring Owner and Occupant shall execute a written instrument which shall accompany all purchase, lease, sublease, rental agreements or similar conveyance relating to the Property. The instrument shall contain the following statement:

"The land described herein has been remedied in accordance with Chapter 6.8 of Division 20 of the Health and Safety Code. The State of California Environmental Protection Agency, Department of Toxic Substances Control, has determined that the cleanup level accomplished by the remediation is protective of public health and the environment as long as the conditions of the State approved Remedial Action Plan for the Property, including the use restrictions imposed by the recorded Covenant to Restrict Use of Property for the Property, a copy of which is attached and incorporated herein by this reference, are complied with. Because hazardous substances remain beneath the capped area of the Property, such conditions render the Property and the Owner(s), lessee(s), or other Occupant(s) of the land subject to the applicable provisions of Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Modification or Removal. The Covenantor, or, with the Covenantor's consent, any Occupant of the Property or any portion thereof may apply to the DTSC for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, Health & Safety Code. DTSC's consent to such variance shall not be unreasonably withheld.

4.02 Termination. The Covenantor or, with the Covenantor's consent, an Occupant of the Property or a portion thereof may apply to DTSC for a

termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with section 25234, Health & Safety Code. The DTSC's consent to such termination of the Restrictions shall not be unreasonably withheld.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise this Covenant shall continue in effect in perpetuity.

4.04 Five Year Review. DWR will review and reevaluate the remedial action set forth in the RAP after a period of five (5) years from the date of completion of the remedial action and five (5) years thereafter. DWR will submit a Five-Year Summary Report, as described in the Operations and Maintenance Plan to DTSC for their review and approval. DTSC will review this report for approval pursuant to section 121(c) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. 99-499, and any future amendments.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served; or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

TO: "Covenantor"
Chief, Site Assessment Unit
Division of Planning and Local Assistance
Department of Water Resources
1416 Ninth Street, Post Office Box 942836
Sacramento, California 94236-0001
Attention: Derrick J. Adachi

COPY TO: Department of Toxic Substances Control
Site Mitigation Branch
10151 Croydon Way, Suite 3
Sacramento, California 96927-2106
Attention: Ed Cargile

5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Sacramento within ten (10) working days of the date of execution by the parties and approval by the California Department of General Services.

5.06 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

COVENANTOR,
CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: Philip S. Wentz
Date: 7/1/98

Title: Chief, Water Quality Assessment Branch

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: James Saville
Date: 6/22/98

Title: Chief, Northern California - Central Cleanup Operations Branch

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On July 1, 1998 before me, Leroy Ellinghouse Jr.

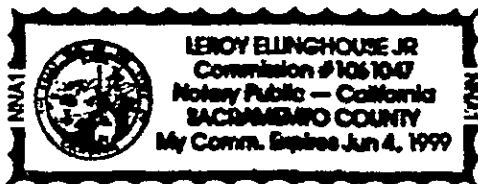
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Philip Gerard Wendt

Name(s) of Signer(s)

☒ personally known to me OR ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Leroy Ellinghouse Jr.
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Deed RESTRICTION

Document Date: 2-1-98 Number of Pages: 13

Signer(s) Other Than Named Above: James Tjosvold

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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